IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 706 of 1994

in

SPECIAL CIVIL APPLICATION No 4278 of 1981

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

VALI MOHMED DOSABHAI SINDHI

Appearance:

1. LETTERS PATENT APPEAL No. 706 of 1994

MR HD DAVE AGP for Appellant No.

MR MB FAROOQUI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 23/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. Respondent-original petitioner-Vali Mohmed Dosabhai Sindhi was appointed as Unarmed Police Constable on 3.10.1947. He had studied only up to 5th Standard. At the time of his appointment, year of his birth was mentioned in service recorded as 1923, without calling for the birth certificate or school leaving certificate. On the basis of it he was to retire with effect from 1.11.1981 on reaching the age of 58 years. Accordingly, he was served with the order dated 16.2.1981 passed on behalf of D.S.P., Mehsana stating that he will be retiring with effect from 1.11.1981 on completing 58 years of service on 2.10.1981. The respondent-original petitioner had large family to maintain. On receiving the impugned order at "Annexure-B" he submitted his school leaving Certificate at "Annexure-D" with forwarding letter at "Annexure-C" to D.S.P., Mehsana for taking necessary action in the matter. He made an application at "Annexure-E" to the I.G.P. with a request to make change of his birth date in his service record. However, nothing was done in the matter, therefore, in the end of October, 1981 he approached this court by way of Special Civil Application No.4278/81 and prayed that the impugned order at "Annexure-B" be quashed and set aside. By way of interim relief he had prayed for stay of execution and operation of the impugned order at "Annexure-B". However, no interim relief was granted in his favour, therefore, he stood retired from service on reaching the age of superannuation with effect from 1.11.1981. However, ultimately, his petition came to be allowed by V.H.Bhairavia, J. (as he then was) by his judgment and order dated 30.4.1993 and the impugned order dated 16.2.1981 (Annexure-B) passed by the authority was quashed and set aside and it was declared that the retirement date of the petitioner would be 1.11.1986 and the authorities were directed to grant him those consequential benefits and to pay him arrears of the period from 1.11.1981 to 1.11.1986 within 10 weeks from the date of receipt of writ of the order. The order passed by the learned Single Judge on 30.4.1993, allowing Special Civil Application No.4278/81 filed by the

respondent-original petitioner, is challenged in this Letters Patent Appeal by the appellants-State of Gujarat, I.G.P. and D.S.P., Mehsana.

#. It appears from the order sheet of this appeal that on 13.12.1994 it was straightway admitted by the Hon'ble First Court and the judgment and order passed by the learned Single Judge was stayed by the Hon'ble First Court by its order dated 13.12.1994 while issuing rule on it making it returnable on 10.1.1995. The said Civil Application No.2923/94 was finally disposed of by the Hon'ble First Court on 25.1.1995 by conforming the ad interim relief granted earlier on 13.12.1994. Thus, by virtue of the order passed on Civil Application, the judgment and order passed by the learned Single Judge allowing the writ petition filed by the respondent-original petitioner remained stayed till today.

#. Learned AGP, Mr.Dave for the appellants vehemently submitted that the learned Single Judge committed grave error in exercising his writ jurisdiction in favour of the respondent-original petitioner. He submitted that at the time of joining the service in 1947, the respondent-original petitioner himself had given his year of birth as 1923 and thereafter till the verge of his retirement he had never made any attempt to get his birth date corrected and for the first time, after a period of more than 30 years he produced such certificate of his school just before the passing of the impugned order. He submitted that under the Rules, it was not open to the authority to correct the birth date at such a belated stage, once it was properly entered in the service record. He submitted that without considering all these aspects, the learned Single Judge simply allowed the petition filed by the respondent-original petitioner on the basis of the school leaving certificate, which was not proper at all. Alternatively, he submitted that in any case of the matter, the learned Single Judge ought not to have awarded back wages for the period of 5 years i.e. from 1.11.1981 to 1.11.1986 as he had not worked during that period. He further submitted that applying principle of "No Work No Pay", at least, back wages for that period of 5 years should not have granted by the learned Single Judge while allowing the writ petition of the respondent-original petitioner.

#. At this stage, Mr.Farooqui, on the instruction of his client, respondent-original petitioner-Vali Mohmed Dosabhai Sindhi, who was very much present before the court stated at the Bar that if this court is inclined to

confirm the order passed by the learned Single Judge, then he will let go the back wages of 5 years from 1.11.1981 to 1.11.1986 awarded to him by the learned Single Judge by allowing his writ petition. Mr.Farooqui further submitted that the respondent-original petitioner is nearly aged 80 years. Though he had filed petition in 1991, his petition came to be allowed by the learned Single Judge in 30.4.1993 i.e. after a period of 12 years. But he has not enjoyed the fruits of that order because of the stay granted by the Division Bench of this court while admitting this appeal in 1994. He submitted that this appeal could see the light of the fate after a period of almost 11 years and even today poor respondent-original petitioner has not got anything. He submitted that the respondent-petitioner, who is old and ailing would like to be satisfied with the order passed by the learned Single Judge declaring him to be retired from service with effect from 1.11.1986 and not from 1.11.1981 with all notional consequential benefits of his service up to 1.11.1986 as if he had retired from service with effect from 1.11.1986. Mr.Farooqui further submitted that when the respondent-petitioner had put on blotless and actual long service of 34 years, then at least he should be allowed to live his rest of the life in peace.

#. Having heard learned counsel for the parties and having regard to the peculiar facts and circumstances of the case, we are of the considered opinion that without dealing with the submissions made by the learned AGP, Mr.Dave on merits and without expressing any opinion about the legality and validity of the judgment and order passed by the learned Single Judge, this appeal be partly allowed on the statement made at the Bar by Mr.Farooqui, on the instruction from the respondent-original petitioner, who was personally present before the court and the order passed by the learned Single Judge awarding back wages to him for the period from 1.11.1981 to 1.11.1986 be quashed and set aside and rest of the order passed by the learned Single Judge be confirmed.

#. Accordingly, this appeal is partly allowed only to the extent that judgment and order passed by the learned Single Judge on 30.4.1993 awarding back wages / arrears from 1.11.1981 to 1.1.1986 to the respondent-petitioner is hereby quashed and set aside and rest of the order passed by the learned Single Judge is confirmed. Now, the appellants are directed to grant all other service benefits, except back wages, to the respondent-original petitioner, as ordered by the leaned Single Judge on 30.4.1993 within a period of three months from the date

of the receipt of this order.

#. At this stage, learned AGP, Mr.Dave submitted that the judgment and order passed by the learned Single Judge may become precedent as it is not quashed and set aside by this Hon'ble Court. This apprehension expressed by learned AGP, Mr.Dave for the appellants is not well founded. At the cost of repetition we may state that we have not expressed any opinion about the legality and validity of the judgment and order passed by the learned Single Judge while partly allowing this appeal. Rest of the order passed by the learned Single Judge is confirmed purely on humanitarian grounds, therefore, there is no question of the judgment and order passed by the learned Single Judge becoming precedent.

With these observations and directions, this appeal is partly allowed.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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